

APPEAL NO. 93339

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On September 24, 1992, a hearing upon remand was held in (city), Texas, with (hearing officer) presiding as called for by Texas Workers' Compensation Commission Appeal No. 92242, dated July 24, 1992. He determined that respondent (claimant) had disability from September 1, 1991, to March 25, 1993, the day the record of the hearing was closed. He also found that claimant's prior medical condition was not the sole cause of her disability. Appellant (carrier) asserts that medical records and documents show that the determination as to sole cause was against the great weight of the evidence. Claimant did not respond.

DECISION

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Briefly, Appeal No. 92242, *supra*, addressed the following facts and determinations in regard to claimant's injury of (date of injury), while working for the Hospital.

Claimant was bathing a frail patient when she was kicked in the head. She saw a doctor at the work site and then saw her own doctor, (Dr. B) on July 23rd. On July 29th Dr. B assessed post-traumatic depression that was probably secondary to trauma. Noting her prior history of nervous breakdown, he hospitalized her calling for psychological and psychiatric testing. (Claimant's husband had died in April 1991, and claimant received counselling from March 29, 1991 to May 17, 1991.)

Claimant also saw (Dr. W) during her hospitalization on July 31st. He noted, "(s)ince being injured, patient has obsessed about dying like her husband. . .who had a concussion. . . ." His impression of claimant was post traumatic stress disorder and major depression. Later, Dr. B wrote that claimant was unable to work because of loss of memory "due to the injury to her head."

At the first hearing the carrier presented no doctor's opinion or evaluation indicating that the claimant's condition prior to the injury was the sole cause of her disability although it stated that it would show claimant's prior problems were the "sole cause" of the hospitalization. Carrier did offer employee records, showing that claimant had problems in the job, and medical records of her past medical condition. A supervisor testified that while claimant had many problems at work, she met standards at the time claimant quit work at the beginning of September 1991.

Appeal No. 92242 pointed out that Dr. B's opinion of the head injury as causing claimant's inability to work was not contradicted. It cited cases indicating that hospitalization periods were evidence of disability. Consistent with the

evidence presented at the first hearing and the hearing officer's finding that the head injury was compensable, Appeal No. 92242 stated that a finding as to sole cause needed to be made in order for the hearing officer's finding of no disability to be supported by sufficient evidence. The case was remanded for such a finding and for a finding as to extent of disability if sole cause was not found.

At the hearing on remand on September 24, 1992, the hearing officer took official notice of the evidence and his decision at the first hearing, along with the Appeals Panel decision that addressed that hearing. He accepted into evidence exhibits from both carrier and claimant. In addition, he left the record open for a period of time primarily to address questions to Dr. B and to secure additional medical records of claimant. No objection was raised to this procedure. As a result, the hearing on remand produced from the carrier two excerpts from the Physician's Desk Reference (PDR) and an unsigned analysis from "Health Benefit Management" of whether proposed treatment for claimant is reasonable. The strongest statement in the latter exhibit stops short of being conclusive as to the sole cause issue; it reads: "this woman's inability to recover from what appears to have been a relatively trivial physical injury suggests that significant psychological or personal problems existed prior to that injury." The PDR excerpts were provided as to Prozac and another drug to support carrier's argument that Prozac, which it asserted had been prescribed prior to the injury, was causing the problem.

Claimant introduced a letter from a psychologist, which said that added testing could pinpoint the cause of claimant's symptoms. She also offered an article from Ladies Home Journal (Lad. Ho. J., pp 56-60, Mar. 1992), which addressed headaches and their cause.

The hearing officer addressed questions to Dr. B, in October 1992. The response consisted of one word answers written on the hearing officer's letter which was returned. That reply indicated claimant's hospitalization was not caused by the head injury, but when queried to explain his short reply, Dr. B said on March 23, 1993, that claimant's hospitalization was "due to the injury she claimed from the Big Spring Hospital." The medical records obtained were from the (county) and reflected counseling from June 1992 into September 1992. The June 11, 1992 "work-up" of (Dr. W) refers to having seen claimant in regard to her husband's death in April 1991. It then reports that claimant was struck by a patient in the head. It said that about a week after the injury, "(s)he saw a local physician and finally was referred to Neurosurgery in Lubbock with (Dr. M). Prior to her being referred to (Dr. M), she was in the hospital here about 2 weeks for observation that's where she was placed on Klonopin and Prozac." These records show repeated reference to her history which indicated the death of her husband and, to a lesser extent, the July 16th injury to her head. The record does indicate that claimant said she felt better when no longer on Prozac and that she was proud that "doctors in Lubbock" say she has a disorder from her injury. In September 1992, Dr. W recorded that it would be best to solve her

medical problems before working further with her psychiatrically. Dr. W noted that during that week claimant's medical doctor had told her she still could not be released to work.

At the hearing on remand, the only testimony given was that of the claimant. Little new evidence was provided, although claimant asserted that she was not given Prozac until after the injury. At times the testimony of claimant dealt with matters irrelevant to the issues. Otherwise the hearing dealt with proposals to obtain evidence and argument by each party.

Claimant's medical records introduced at the first contested case hearing indicate that she was given samples of Prozac by Dr. B on June 11, 1991. However, when Dr. B again saw her on July 11, 1991, there is no indication that Prozac was provided or prescribed. We note that carrier's exhibit relating to Prozac from the PDR shows that 10 to 15 percent of patients treated with Prozac showed anxiety; the records in evidence do not indicate any medical opinion that Prozac caused symptoms in the claimant, but claimant, as stated, did at one point indicate feeling better when not taking it.

The hearing officer in his decision after the hearing on remand found that claimant's condition prior to the head injury was not the sole cause of her inability to work. This finding was supported by sufficient evidence when considering both the evidence at the first hearing and that admitted at the hearing on remand. Dr. B noted in his record at the time that he was putting claimant into the hospital in July 1991 that she had been hit in the head by a patient where she worked. Dr. B later wrote that claimant could not work because of loss of memory due to the head injury. In 1993 Dr. B replied that claimant "was hospitalized after the July 1991 incident, due to injury she claimed from the Hospital." While Dr. B in March 1993 defers to a psychiatrist's opinion as to whether claimant had "post traumatic stress syndrome," his records shortly before claimant's admission show his assessment as "history of head injury" and "history of headache, secondary to being hit by a patient at the State Hospital." At the time the claimant was hospitalized, Dr. B's assessment was "post traumatic depression, probably secondary to trauma." We note that Dr. B never called the problem "post traumatic stress syndrome." In considering these entries plus Dr. B's March 1993 reply, the hearing officer could have viewed the latter reply as an equivocation by Dr. B concerning where the injury may have occurred, rather than that there was no injury. Even if Dr. B gave a different opinion as to injury, Texas Workers' Compensation Commission Appeal No. 92182, dated June 24, 1992, indicates that the hearing officer, as trier of fact, can believe evidence provided by a witness on a prior occasion over contradictory testimony the same witness gave at the hearing itself. From these documents and the testimony of the claimant, the hearing officer could conclude that the head injury was a contributing factor to the hospitalization and her continued inability to work.

The medical records the carrier introduced show that claimant has a preexisting history of mental health treatment. Claimant's condition prior to the injury may be the major cause of her symptoms, and carrier's added evidence that "significant" psychological problems existed before the injury is consistent with the medical records carrier previously

introduced. These documents, including those related to Prozac, will not support, however, a decision by the Appeals Panel that the finding relating to sole cause is against the great weight and preponderance of the evidence.

The findings and conclusions of the hearing officer in his decision on remand are sufficiently supported by the evidence. The decision and order on remand are not against the great weight and preponderance of the evidence, presented at both the first hearing and the hearing on remand, and the decision and order are consistent with those findings of fact made at the first hearing that were not superseded by findings of fact at the hearing on remand. Affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge